

Women at work – are employment rights really working for women?



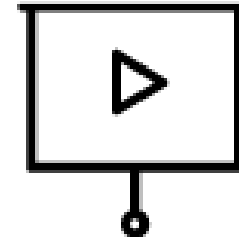
Zoom Etiquette



**This webinar is
being recorded**

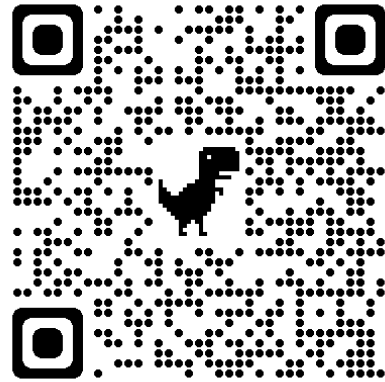


**Use chatbox
function**

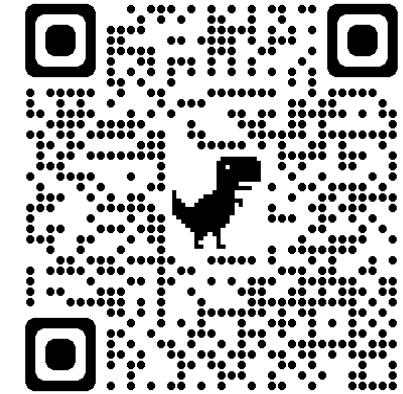


**Presentation slides will
be sent to you**

Introduction & Connect with Us



Jackie Cuneen
Partner | Employment



Philip Bain
Solicitor | Employment

Open your camera and hold your mobile device directly above the LinkedIn member's QR code that you'd like to connect with.

Introduction

In this webinar Jackie Cuneen and Phillip Bain from the Employment Law team at Machins Solicitors will be marking International Women's Day by discussing some of the critical issues for employers when it comes to women's employment law rights.

We will look at legislative developments and case law and how far these have advanced these.

Agenda

- The impact of the pandemic on women in the workplace – positive or negative?
- Women as working parents - protection from redundancy
- Fertility / IVF
- Gender pay gap
- Menopause
- Discrimination and harassment - sex and race
- Grievances – the nuclear option?

The impact of the pandemic on women in the workplace – positive or negative?

- The COVID-19 pandemic has severely changed the employment landscape for all. However, the pandemic caused significant disruption to care responsibilities.
- This disruption exacerbated existing inequalities by increasing the amount of unpaid caring undertaken by women. As the schools and childcare facilities closed, studies have shown that childcare and home-schooling duties fell predominantly on women. The Institute of Fiscal Studies found that mothers found it harder to work productively from home during the pandemic due to the additional time devoted to childcare than by men.

Advantages of the pandemic

- Time saving.
- more efficient.
- Increased productivity.
- Flexibility and agility.
- Better work/life balance
- Both parents take a share of childcare

Disadvantages of the pandemic

- Home working doesn't suit everyone.
- Staff feeling isolated.
- Problems with staff development.
- Negative impact on mental health.
- Decreased staff morale

Work-Life Imbalance - Burnout

- Another noticeable challenge that the working women face is the lack of work-life balance. Of course, everyone struggles with balancing their work and personal life. This was made especially obvious during the COVID-19 pandemic, with workers working from home reporting they were unable to switch off and maintain boundaries with their work.
- As a result, this imbalance placed a significant amount of pressure on working women, which also placed a strain on their career and advancement within their roles, but also resulted in serious burnout.
- Where an office provides a clear physical distinction between work and home life, working at home can lead to staff struggling to differentiate between work-life and home-life. This may lead to employees finding it difficult to know how to switch off from work leading to longer hours, increased stress and inevitable burnout.

Takeaway Practical Tips for Employers

- Schedule quick catch-ups by phone or regular team meetings to ensure that staff are given more opportunity to feel involved and part of the team. More informal and social catch-ups would also help counteract any feelings of isolation.
- Encourage staff to take regular breaks and remind them of the importance to take their leave.
- Encourage staff to take the opportunity to learn new skills through online events and courses.
- Encourage staff to develop a working routine, set up a dedicated work space and set boundaries for other household members.
- Risk assess hybrid /remote working.
- Ensure reward and promotion are free from unconscious bias

Women as working parents - protection from redundancy

- Being an expectant mother or new parent is already a hugely exciting yet anxious time, without the added pressure of worrying about job security. However, pregnant women and new parents will receive greater protection against being made redundant under new rules set to become law later this year.
- Under current legislation (Regulation 10 of the Maternity and Parental Leave Etc Regulations 1999 (MAPLE)), if a redundancy situation arises, employees on maternity leave, adoption leave or shared parental leave have the right to be offered any suitable alternative vacancy, where one exists, as a priority over and above other colleagues.

The current position

- Employees on maternity leave should be offered a suitable alternative vacancy at the start of the redundancy process.
- In a restructuring, the roles created as part of the restructure will constitute “vacancies” if they differ from the employees’ current roles and, if suitable, should be offered to employees on maternity leave.
- The duty is to offer a suitable vacancy, not a specific role. The employer can adhere to this through offering any suitable vacancy (ie it does not have to be a vacancy that the employee wants).
- This is also be applicable to both men and women taking shared parental leave from 6 April 2015 as there are equivalent provisions on suitable alternative vacancies in the Shared Parental Leave Regulations 2014.

The Pregnancy and Maternity (Redundancy Protection) Bill

- The new legislation will enable this redundancy protection to be extended so that it applies to pregnant women as well as new parents returning to work from a relevant form of leave. Under the new legislation, the protection will be extended to last up to 18 months from the start of maternity leave. This 18-month window ensures that a parent returning from a year of maternity leave is entitled to six months' additional redundancy protection.
- The new legislation will help shield new parents and pregnant women from workplace discrimination, and offer them greater job security at such an important time in their lives. It will also be beneficial to businesses, helping to improve employee relations and eliminate potentially costly and time-consuming conflict in the workplace.

IVF/Fertility Treatment - Rights at work

- There is no statutory right to time off work for fertility treatment, which can often be time consuming and stressful for employees.
- However, your employer should treat your medical appointments for IVF treatment like any other medical appointment. If you are off sick due to the side effects of IVF, your employer should treat your absence as no different to any other sick leave.
- It may therefore be a good idea to explain to your employer that you are undergoing IVF at an early stage. Your employer have a special leave policy which could cover absences for fertility treatment. This is likely to be unpaid leave but it is worth checking with your employer. Alternatively, you could consider taking annual leave for some of your appointments.

IVF/Fertility - Statistics

- More than half of women (58%) who undergo IVF treatment do not feel able to tell their employer, with fear of losing their job the biggest reason for keeping quiet, research has revealed.
- Worries over career progression and job security are the primary causes of women holding back IVF disclosure, with a third (32%) fearing it would cost them their job and a quarter (26%) concerned it would make them seem less committed to their role.
- The findings, from a survey by insurer Zurich UK of 250 women who have recently undergone IVF treatment, highlight the need for businesses to better support employees undergoing treatment as fertility rates in younger women continue to decline.

Creating a fertility-friendly culture

Although most did not feel able to, women who did tell their employers about their IVF treatment saw significant benefits. The vast majority (64%) said discussing IVF with managers or employers made their overall IVF experience easier or much easier to deal with.

Providing enhanced leave policies was the most important factor in determining whether employees would have felt comfortable disclosing their IVF treatment to their employer. Over half (52%) of women who didn't disclose their treatment said they would have been more willing to do so if their company had these policies in place.

Next steps for Employers

- Although there is no case law on the point, a woman undergoing IVF may have a claim for indirect sex discrimination if she is subjected to a detriment for a reason connected to the treatment – for example, where an employer does not allow her to take unpaid leave.
- Moving forward, all employers should ensure that:
 1. Ensure employers and employees recognise that fertility issues can affect as many as one in six couples, all of working age. Open up conversations within the workplace so that those facing fertility struggles don't need to suffer in silence.
 2. Educate all employees about the reality of what fertility treatment involves and the link to mental health.
 3. Build an inclusive and supportive workplace, helping them to become modern employers of choice.

Gender Pay Gap

- Women work on average 54 days for free!
- New TUC analysis shows that this is due to the **gender pay gap**, which currently stands at 14.9%
- UK ranked 5th globally with average score 52%, just below France at 55%, and higher than the US average of 40% - Social enterprise Equileap
- The Gender pay gap is the difference between the average pay of men and women in an organisation.
- **Why?** Career breaks - childcare and costs, lack of flexibility/ well paid part-time roles, less women in senior roles, disparity of women in certain roles?

What is Gender Pay Gap reporting

- Employers with 250 plus employees must report data annually
- Pay (“ordinary pay” and “bonus pay” includes basic pay, bonuses, allowances (such as on-call and standby allowances), pay for piecework, pay for leave (fully paid leave) and shift premiums. It excludes overtime pay, expenses, benefits in kind and the value of salary sacrifice schemes.
- New Government guidance published in February:
<https://www.gov.uk/government/publications/gender-pay-gap-reporting-guidance-for-employers>

Gender Pay Gap and Equal Pay

EqA2010 implements the principle that men and women should receive **equal pay** for **equal** work:

- if employed under a contract **personally** to do work entitled to contractual terms as favourable as those of comparator (hypothetical) of other gender in the "same employment" if **equal** work (like work, rated as equivalent or of **equal** value).
- “sex equality clause” v “material factor defence”
- S77 EqA 2010 “**pay** secrecy clause” unenforceable if prevents an employee making “relevant **pay** disclosures” – and unlawful to victimise employee for this e.g. male and female colleagues discussing bonuses.

NB. Equal pay claims not only in private sector!

Employer actions to close the gap

- “Action plan”
- Encourage flexible working and greater uptake by senior leaders and men.
- Enhance SPL and other family leave to encourage take up
- Recruitment: career breakers, anonymise CVs, adverts- default flexibility
- Mentoring, sponsorship and networking programmes,
- Set specific time (and realistic) targets for improvement in equality.
- Interview shortlists of at least 2 women/ panel interviews
- Transparent policies and criteria for promotion, pay and reward processes;
- Publish non-negotiable salary ranges
- Monitor and review policies
- Appoint diversity manager

In the Pipeline

- WEC report on [*Ethnicity pay gap reporting \(UK Parliament: "No excuse" for lack of ethnicity pay gap statistics, 8 February 2022\)*](#).
- Report recommended government should introduce mandatory ethnicity pay gap reporting by April 2023 for all organisations that report for gender pay gap
- **Ethnicity pay gap - current government policy: no mandatory reporting but will support employers with voluntary reporting – BEIS to publish guidance**

Menopause at work

- 1 million women could quit due to lack of menopause support! (*Research Without Barriers poll*):-
- Discriminatory treatment experienced by employees -inappropriate comments, missing out on pay rises/ promotions and dismissal. Tribunal cases on the rise!
- **NB Legal position complex:**
- Employees potentially protected under the EqA 2010
- **Menopause** can fall under the 3 protected characteristics of age, sex and disability discrimination ***A v Bonmarché Limited (2019)***
- - age - women of “certain age” - narrow -premature and induced menopause? .
- -disability– long term mental or physical impairment substantial effect
- -sex–comparator? Sex ‘*indissociable*’ from the menopause?

Government reject menopause as legally protected characteristic

- July 2022, the House of Commons Women and Equalities Committee (WEC) published a report, *Menopause and the workplace*
- Jan 2023 Government rejected Report's key recommendations:
 - sex and age as dual protected characteristic under the EqA 2010.
 - new protected characteristic of **menopause**, including duty to provide reasonable adjustments for menopausal employees.
 - development and piloting of a menopause leave policy
 - production of model menopausal policies

Employer's initiatives

- Raise awareness, promote open culture
- Develop a **menopause** policy that explains how the **menopause** can affect people differently and what support is available.
- Provide awareness training for managers on the **menopause** and how to deal with it sensitively and fairly.
- Consider practical changes at work to help employees manage their symptoms, such as temperature control.
- Resources: ACAS, CIPD, NHS Guidance on the menopause

In the pipeline

- Government did accept Report's recommendations for:
 - Menopause Employment Champion – to support employer led campaign
 - Bringing forward legislation right to request flexible working a day one right
 - “The Employment Relations (Flexible Working) Bill” at third reading stage.
 - Publication of HSE and EHRC guidance on supporting employees experiencing menopause – general guidance issued for employers to support disabled and those with long-term health conditions (incl. menopause?)
- Labour – require employers to publish “Menopause action plan”?

Harassment - sex and race

- Harassment at work due to sex and/or race unlawful since 1970s
- Last year was the 5th anniversary of the #MeToo movement
- The Fawcett Society's October 2021 report [Tackling sexual harassment in the workplace: recommendations for employers](#)

45% of women surveyed experienced sexual harassment online; approx. a quarter said this had increased since pandemic/home working
-sexual harassment disproportionately targeted at young women and ethnic minorities

Harassment - sex and race

S26 of the EqA 2010 prohibits **harassment** both:

- related to protected characteristic such as sex and race; and
- **Sexual harassment**

Sexual harassment occurs where both:

A engages in **unwanted conduct of a sexual nature**.

Conduct **purpose/ effect** of violating B's dignity, or creating intimidating, hostile, degrading, humiliating or offensive environment for B.

Employer's potential defence that it took all **reasonable steps** to prevent the employee from acting in that way

Reasonable steps

- *Allay v Guhlen* (EAT) claim for harassment related to race
 - Employer had equal opportunity policy and anti-bullying and harassment procedures and the employees involved had all received, equality and diversity training and also bullying and harassment training a year before
 - No evidence worked - perpetrator described racist comments as “*banter*” !
 - EAT described policies and training as stale.
- McDonald's anti-sexual harassment pledge with the Equality and Human Rights Commission (EHRC) – will it work?
 - Union claimed more than **1,000** cases of sexual harassment among staff in 2019Sexual harassment was “rife - zero hour contracts, dependant on the good will of managers to be allocated hours, and a culture of cover up with the use of NDAs

Employer Initiatives

- Policies and training must be fit for purpose not tick box
- Imaginative, interactive and inclusive training
- Train and empower managers
- Bystanders, stereotypes, microaggressions
- Review to reflect hybrid/diverse working arrangements
- Monitor and risk assess
- Anonymised surveys
- Effective reporting mechanisms and implementation
- Confidence to speak out Protection from retaliation – victim blaming
- Sign off NDAs sexual harassment at Board level
- Zero tolerance
- Cultural shift required – trust and transparency

In the Pipeline

- Statutory code of practice sexual harassment by EHRC and Government guidance
 - [The Worker Protection \(Amendment of Equality Act 2010\) Bill](#)
 - Employers mandatory **proactive** duty to “*take all reasonable steps*” to prevent employees experiencing workplace sexual harassment.
 - Up to 25% uplift on ET awards failure duty to prevent harassment.
 - Third party harassment claim against employer after **one** incident of harassment, lowering pre-2013 threshold set by the ‘3 strikes’ rule.
 - EHRC enforcement action impose legally binding agreements
- NB** to be introduced "*as soon as*" parliamentary time allows

Campaign to extend time limit from 3- 6 months to bring an ET claim?

Grievances – the nuclear option?

- Employee concern at work standard advice is to raise a grievance
- Credibility and confidence- how many grievances result in resolution or do they cause more conflict?
- Are grievances only initiated with exit in mind or mitigating the risks of a Tribunal?
- Parties penalised at ET if fail to comply with statutory grievance procedures- compensation can be discounted/increased by up to 50%

Case in point – toxic handling of grievance

- Recent case in headlines highlighted by NI Equality Commission “toxic laddish culture that shows scant respect for female colleagues”.
- Woman was told to stand up and turn around before being slapped on the bottom with a ruler by her male manager - bystander employees treated it as a joke.
- She raised with senior manager and HR. She refused as totally inappropriate to go to café with perpetrator to resolve matters.
- Her formal grievance was not acknowledged for 10 days
- Investigation took 5 weeks and she was treated like a perpetrator not a victim!
- In the appeal it was alleged she had “*dressed and behaved provocatively*”
- She resigned as she could not return to work.
- Her case settled for £90,000.

Employer initiatives

- **Doing things differently?**
- Culture – perpetrators and pariahs
- Before you get to process - safe to speak up and out
- Revisit your policies and procedures
- Train employees and managers
- Act quickly before entrenched
- Informal stage is key
- Early mediation – before formal investigation?

Any Questions?



What's coming up...

As of January 2023 our webinar programme has been extended to monthly presentations.

- **Rights to time off – 19th April 2023**



Sign up here - <https://www.machins.co.uk/events/>

Get in touch!

Jackie Cuneen – jackie.cuneen@machins.co.uk

Philip Bain – philip.bain@machins.co.uk

01582 514000

www.machins.co.uk



[@machinslaw](https://twitter.com/machinslaw)



[/machins-solicitors-llp](https://www.linkedin.com/company/machins-solicitors-llp)



[@machinslaw](https://www.instagram.com/machinslaw)



[machinssolicitorsllp](https://www.facebook.com/machinssolicitorsllp)